

House Bill 1017

By: Representatives Lunsford of the 110th, Walker of the 107th, Ralston of the 7th, Oliver of the 83rd, Jackson of the 161st, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 1 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone service in general, so as to provide for the protection of persons of diminished mental capacity from the incurring of actual or voidable obligations through telephone solicitation; to provide for legislative findings; to define terms; to provide for the establishment of a registry to identify persons of diminished mental capacity and the telephone numbers serving them; to prohibit telephone solicitation of such persons and numbers; to provide for administration by the Public Service Commission and enforcement by the administrator of the Fair Business Practices Act; to provide that contracts and obligations induced through violation of this Act shall be void; to provide for judicial remedies; to provide for other related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone service in general, is amended by adding a new Code Section to read as follows:

"46-5-29.

(a) The General Assembly finds that:

(1) The use of the telephone to market goods and services is pervasive now due to the increased use of cost-effective telemarketing techniques;

(2) There are many individuals in this state who lack the mental capacity to wisely respond to telephone solicitation and may incur actual or voidable contractual obligations through telemarketing contacts;

(3) There exists a need to protect such individuals from incurring such obligations while allowing them the use of telephone service for other purposes, which need may be met through the use of the registry established under this Code section; and

(4) It is the purpose of this Code section to protect persons of diminished mental capacity.

(b) As used in this Code section, the term:

(1) 'Person of diminished mental capacity' means a person who lacks the mental capacity to wisely respond to telephone solicitation. No judicial proceeding shall be required to establish this status; and for purposes of this Code section a person may so declare himself or herself or be so declared by his or her conservator or by any member of the person's family residing in the same household.

(2) 'Residential, mobile, or wireless subscriber' means a person who has subscribed to telephone service from a local exchange company or mobile or wireless telephone service provider or other persons living or residing with such person.

(3) 'Telephone solicitation' means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, and further specifically includes but is not limited to communications:

(A) To any residential, mobile, or wireless subscriber with that subscriber's prior express invitation or permission;

(B) By or on behalf of any person or entity with whom a residential, mobile, or wireless subscriber has a prior or current business or personal relationship; or

(C) By or on behalf of a charitable organization which has filed a registration statement pursuant to Code Section 43-17-5, is exempt from such registration under paragraphs (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from such registration as a religious organization or agency referred to in paragraph (2) of Code Section 43-17-2.

Such communication may be from a live operator, through the use of ADAD equipment as defined in Code Section 46-5-23, or by other means.

(c) No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential, mobile, or wireless subscriber in this state on whose behalf notice has been given to the commission, in accordance with regulations promulgated under subsection (d) of this Code section, that such person is a person of diminished mental capacity.

(d)(1) The commission shall establish and provide for the operation of a data base to compile a list of telephone numbers of residential, mobile, and wireless subscribers identified under subsection (c) of this Code section. It shall be the duty of the commission to have such data base in operation no later than January 1, 2009.

(2) Such data base may be operated by the commission or by another entity selected by and awarded a contract by the commission.

(3) No later than January 1, 2009, the commission shall promulgate regulations which:

(A) Require each local exchange company to inform its residential, mobile, or wireless subscribers of the opportunity to provide notification to the commission or its contractor that such subscriber is a person of diminished mental capacity;

(B) Specify the methods by which each residential, mobile, or wireless subscriber may give notice to the commission or its contractor;

(C) Specify the length of time for which a notice shall be effective and the effect of a change of telephone number on such notice;

(D) Specify the methods by which such notices and revocations shall be collected and added to the data base;

(E) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base as required to avoid calling the telephone numbers of residential, mobile, or wireless subscribers included in the data base; and

(F) Specify such other matters relating to the data base that the commission deems desirable.

(e) There shall be no fee for inclusion in the data base.

(f) No person shall knowingly compile or disseminate or compile and disseminate information obtained from the data base for any reason other than those legitimate purposes established by law. Any person found guilty of violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature. Each instance of an unauthorized disclosure of information from the data base shall constitute a separate offense.

(g) The administrator appointed pursuant to Code Section 10-1-395 shall have authority to initiate proceedings, pursuant to Code Section 10-1-397, relating to a knowing violation or threatened knowing violation of this Code section. Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of \$2,000.00 for each knowing violation, and to seek additional relief in any superior court of competent jurisdiction. Such actions shall be brought in the name of the state. The provisions of Code Sections 10-1-398, 10-1-398.1, and 10-1-405 shall apply to proceedings initiated by the administrator under this subsection. The administrator is authorized to issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of subsection (c) or (f) of this Code section, in accordance with the provisions of Code Sections 10-1-403 and 10-1-404.

(h) Any contract entered into or obligation incurred by a person listed in the data base under this Code section as a person of diminished mental capacity, which contract or obligation is induced through telephone solicitation, shall be void. In the event of the necessity of a legal action to determine the invalidity of such a contract or obligation, the

1 person of diminished mental capacity may recover attorney fees and expenses of litigation
2 and may be awarded punitive damages by the trier of fact.

3 (i) A court of this state may exercise personal jurisdiction over any nonresident or his or
4 her executor or administrator as to an action or proceeding authorized by this Code section
5 in accordance with the provisions of Code Section 9-10-91.

6 (j) The remedies, duties, prohibitions, and penalties of this Code section are not exclusive
7 and are in addition to all other causes of action, remedies, and penalties provided by law."

8 **SECTION 2.**

9 All laws and parts of laws in conflict with this Act are repealed.